

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Competitive Product Prices
Inbound Competitive Multi-Service Agreements
with Foreign Postal Operators
China Post Group–United States Postal Service
Multi-Product Bilateral Agreement (MC2010-34)
Negotiated Service Agreement

Docket No. CP2011-68

NOTICE AND ORDER CONCERNING FILING OF AN ADDITIONAL
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENTS
WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued August 22, 2011)

I. INTRODUCTION

On August 16, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, that it has entered into an additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 agreement.¹ The Notice concerns the inbound portion of a Multi-Product Bilateral Agreement with China Post Group (China

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, August 16, 2011 (Notice). See also Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

Post 2011 Agreement) that the Postal Service seeks to add to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

In Order No. 546, the Commission approved the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product and a functionally equivalent agreement, Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement). The Notice states that for other competitive products, the Commission has authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633.² The Postal Service asserts that its filing demonstrates that the China Post 2011 Agreement fits within the Mail Classification Schedule (MCS) language in Governors' Decision No. 10-3 originally filed in Docket Nos. MC2010-34 and CP2010-95. Additionally, it contends that the China Post 2011 Agreement to deliver inbound Air Parcel Post (Air CP), Surface Parcel Post (Surface CP) and Express Mail Service (EMS) in the United States is functionally equivalent to the agreement to deliver inbound Air CP, Surface CP and EMS in the TNT Agreement. The Postal Service requests that the China Post 2011 Agreement be included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the China Post 2011 Agreement;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 10-3 which establishes prices and classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators agreements, proposed MCS language, formulas for prices, certification of the Governors' vote and certification of compliance with 39 U.S.C.3633(a); and

² See Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal.

China Post 2011 Agreement. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5 and in accordance with Order No. 546. The Postal Service states that the competitive services in the China Post 2011 Agreement include rates for Air CP, Surface CP, and EMS, requires performance metrics for late delivery, late information transmission and missing delivery information and imposes associated penalties. *Id.* at 3. The Postal Service states it intends for the effective date for the rates for inbound Air CP, Surface CP and EMS to be January 1, 2012.³ *Id.* at 3, Attachment 1 at 2. It maintains that the rates in the agreement are intended to remain in effect for one year from the effective date unless terminated sooner. *Id.* at 3-4. The China Post 2011 Agreement provides that it becomes effective after all regulatory approvals have been received, acceptance of specific business rules by both parties, notification to China Post, and mutual agreement on an effective date. *Id.* Attachment 1 at 2. It includes a table for intended effective dates applicable to settlement rates for specific products that is variable based on notification from the Postal Service. The agreement also provides that prior to expiration, the parties will determine whether to extend or modify the agreement. *Id.* at 7-8. The agreement may, however, be terminated by either party on not less than 30 days' written notice. *Id.* at 3.

Functional equivalence. The Postal Service asserts that the China Post 2011 Agreement is substantially similar to the inbound portion of the TNT Agreement based on the products being offered and the agreement's cost characteristics. *Id.* at 5. The Postal Service identifies differences that distinguish the instant agreement from the TNT Agreement. *Id.* at 5-8. These distinctions include different foreign postal operators,

³ Article 22 of the China Post 2011 Agreement provides that if an effective date for the settlement rates for EMS in the China Post 2011 Agreement is established, the China Post–United States Bilateral Agreement that was approved in Docket Nos. MC2010-13 and CP2010-12 will terminate at 11:59 p.m. on the day prior to the effective date of the settlement rates for EMS in the China Post 2011 Agreement. *Id.* at 3-4 n.6; *id.* Attachment 1 at 6.

execution of a separate accord, customs inspection, termination results, confidentiality terms, effective date, rate tables, term, content restrictions, and other differences. *Id.*

The Postal Service asserts that the China Post 2011 Agreement and the TNT Agreement incorporate the same cost attributes and methodology and the relevant cost and market characteristics are similar, if not the same, for the China Post 2011 Agreement and the TNT Agreement. *Id.* at 8. Despite some differences, the Postal Service asserts that the China Post 2011 Agreement is, “functionally equivalent in all pertinent respects” to the TNT Agreement previously filed. *Id.* (Footnote omitted.)

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 2, Attachment 4.

The Postal Service concludes that the China Post 2011 Agreement complies with 39 U.S.C. 3633 and is functionally equivalent to the TNT Agreement. Therefore, it requests that the Commission add the China Post 2011 Agreement to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 8.

II. NOTICE OF FILING

The Commission establishes Docket No. CP2011-68 for consideration of matters raised by the Postal Service’s Notice.

The Commission appoints James F. Callow to serve as Public Representative in this docket.

Comments. Interested persons may submit comments on whether the Postal Service’s filings in the captioned docket are consistent with the policies of 39 U.S.C. 3632, 3633 or 39 CFR part 3015. Comments are due no later than August 29, 2011. The public portions of this filing can be accessed via the Commission’s website (<http://www.prc.gov>).

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. CP2011-68 for consideration of the matters raised in this docket.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than August 29, 2011.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary